

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of

MCI TELECOMMUNICATIONS CORPORATION

RM 9108

BILLING AND COLLECTION SERVICES
PROVIDED BY LOCAL EXCHANGE CARRIER
FOR NON-SUBSCRIBED INTEREXCHANGE
SERVICES

**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to Public Notice, DA 97-1328 (released June 25, 1997), hereby submits its comments in support of the "Petition for Rulemaking" ("Petition") filed by MCI Telecommunications Corporation ("MCI") on May 19, 1997. In its Petition, MCI urges the Commission to initiate a rulemaking proceeding to create rules to govern the provision by local exchange carriers ("LECs") of billing and collection services to providers of non-subscribed interexchange services. Specifically, MCI asks the Commission to promulgate rules which would

¹ A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, local, wireless, internet and enhanced services.

ensure that both incumbent and competitive LECs provide billing and collection for non-subscribed services to nonaffiliated providers of such services on terms and conditions no less favorable than those applied to themselves or their affiliates. TRA endorses MCI's request for initiation of a rulemaking proceeding to address billing and collection services for non-subscribed services, but urges the Commission to structure that proceeding broadly enough to allow as well for consideration of the matters raised in the "Petition for Declaratory Ruling" filed by America's Carriers Telecommunications Association ("ACTA") on January 17, 1997.²

In its comments in support of the ACTA Petition, TRA urged the Commission to confirm that incumbent LECs are required to make available to interexchange carriers ("IXCs") the customer billing information necessary to bill for 10XXX calls. As TRA explained, the Commission has long required LECs to provide under tariffed rates, terms and conditions the billing name and address ("BNA") information associated with calling card, third party and collect calls.³ While it recognized that the Commission had stopped short of mandating the provision of BNA data associated with 10XXX calling, TRA emphasized that the Commission has authorized LECs to "disclose BNA information associated with 10XXX 1+ calls."⁴

Moreover, TRA pointed out that subsequently, the Telecommunications Act of 1996 imposed on incumbent LECs the duty to provide nondiscriminatory access to network elements on an unbundled basis and that unbundled network elements included:

² Public Notice: America's Carriers Telecommunications Association Files Petition for Declaratory Ruling Regarding Access to Casual Calling Customer Billing Information, DA 97-825 (released April 18, 1997).

³ Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 8 FCC Rcd. 4478, ¶¶ 11 - 20 (1993) *recon.*, 8 FCC Rcd. 6393 (1993), *further recon.*, 8 FCC Rcd. 8798 (1993), *further recon.* 11 FCC Rcd. 6835 (1996), *affirmed sub nom. AT&T Corp. v. FCC*, Case No. 96-1147 (D.C.Cir. May 16, 1997).

⁴ Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 11 FCC Rcd. 6835 at ¶¶ 39, 41.

all "facilit[ies] or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."⁵

And TRA emphasized, Bell Operating Companies ("BOCs") are precluded by the Telecommunications Act of 1996 from discriminating between an affiliate and any other entity "in the provision . . . of goods, services, facilities, and information."⁶ Indeed, Section 271(c)(1) "establishes an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities," a requirement which "extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate" and which is not limited to "telecommunications-related or . . . common carrier-related 'goods, services, facilities and information'" or "information 'concerning [the BOC's] provision of exchange access'."⁷

Noting the explosive growth of casual calling, TRA urged the Commission to declare mandatory, rather than permissive, LEC provision of BNA data associated with casual calling in furtherance of both competitive and consumer interests. TRA referred the Commission to its own assessment that:

⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 262 (1996), *motion for stay denied*, 11 FCC Rcd. 11754, *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19734 (1996), *further recon. pending, vacated in part. Iowa Utilities Board v. FCC* (and consolidated cases), Case No. 96-3321, *et al.*, (8th Cir. July 18, 1996), *partial stay granted* 109 F.3d 1418 (1996), *stay lifted in part* (Nov. 1, 1996), *motion to vacate stay denied* 117 S.Ct. 429 (1996).

⁶ 47 U.S.C. § 272(c)(1).

⁷ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, ¶¶ 197, 217 - 18, 222 (released Dec. 24, 1996), *pet. for rev. pending sub nom. Bell Atlantic v. FCC*, Case No. 97-1067 (D.C.Cir. filed January 31, 1997).

only the LECs can provide BNA in accurate, up-to-date form. BNA is generated exclusively by LECs as a byproduct of their provision of exchange access service, and only LECs have the capacity to keep this information current. Other sources of BNA information . . . are neither as accurate nor as complete as the data maintained by the BOCs.⁸

And TRA stressed both the increased potential for fraud and the ability of the LECs to use their control of this essential information to secure an unfair competitive advantage (or deny existing IXCs a potent competitive tool) in the "in-region," interLATA market they have or will soon be entering.

Consistent with the above, TRA concurs with MCI that "[n]on-subscriber services are important for customers and competitive carriers alike," providing a valuable service for consumers, particularly low income consumers, and a "competitive opportunit[y] . . . [for] market entrants," particularly smaller carriers.⁹ TRA further agrees with MCI that these consumer and competitive benefits are being threatened by adverse actions being taken, or proposed to be taken, by LECs with respect to current billing and collection arrangements. Such adverse actions include premature termination, or forced renegotiation, of outstanding billing and collection agreements.

TRA agrees with MCI that LEC-provided billing and collection services are the only viable option for billing and collecting 10XXX calling charges, particularly in the short term and for smaller carriers. Without in any way suggesting that incumbent LECs do not have an obligation to provide IXCs with the customer billing information necessary to bill for 10XXX

⁸ Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 8 FCC Rcd. 4478 at ¶ 16 (footnotes omitted).

⁹ MCI Petition at 2.

calls, TRA concurs with MCI that direct billing of such calls by IXC's based on BNA data would be an extremely expensive undertaking for small carriers, particularly given the high database query charges assessed by a number of the incumbent LEC's and prohibitions against reuse of BNA. And competition will not remedy this problem, because, as the Commission has recognized, other sources of BNA information . . . are neither as accurate nor as complete as the data maintained by the BOC's."¹⁰ Moreover, direct billing generates customer confusion resulting from the receipt of bills from multiple IXC's.

While it does not disagree with MCI that "creation of a viable and efficient clearinghouse for charges to, and payments from, non-subscribed customers" could prove to be a long term solution, TRA is concerned that access to such a clearinghouse operation might not be readily available to smaller carriers. TRA very much agrees with MCI, however, that given the complexities of the issues involved in creating such a clearinghouse, other actions must be taken here to ensure the continued availability of LEC-provided billing and collection. Any sort of time lag will result in increased unbilled and uncollected charges for non-subscribed services.

TRA agrees with MCI that the Commission retains Title I ancillary jurisdiction over billing and collection services as activities "'incidental' to the transmission of wire communications and thus . . . within the meaning of 'wire communications' as defined in Section 3(a) of the Act."¹¹ Moreover, TRA concurs with MCI that the adverse impacts that would be occasioned by termination or the practical unavailability of LEC-provided billing and collection

¹⁰ Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 8 FCC Rcd. 4478 at ¶ 16 (footnotes omitted).

¹¹ Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 7 FCC Rcd. 3528, ¶ 26, fn. 50 (1992).

services for non-subscribed services warrant exercise by the Commission of this authority. As noted above, there are no viable alternatives to LEC-provided billing and collection for non-subscribed services. As further indicated above, loss of this solitary option would have adverse consumer and competitive effects. And as still further discussed above, any failure by a BOC or other incumbent LEC to offer such services, while still providing such services to itself or its affiliates, would be discriminatory and contrary to law. As succinctly described by MCI, "[s]uch discrimination between LEC-affiliated non-subscribed services providers and unaffiliated IXCs in the availability of billing and collection . . . can only be seen as an arbitrary means to secure an anticompetitive advantage to bolster LEC entry into interexchange services, by driving up the costs of competing providers, promoting market exit, and establishing the LECs as the only parties capable of providing non-subscribed services bills consolidated with local telephone bills."¹²

The exercise of jurisdictional authority recommended by MCI, in TRA's view, is measured and rational. MCI has not asked the Commission to re-regulate billing and collection services. Rather it has requested only that such services be provided in a non-discriminatory manner. Under MCI's approach, an LEC would only be required to offer billing and collection services for non-subscribed services if it provided such services for itself or to an affiliate and then it would only have to offer such services to unaffiliated entities on just and reasonable terms and conditions comparable to those on which it provided the service to itself or its affiliates. TRA agrees with MCI that any such rules should apply to all LECs, including competitive, as


¹² MCI Petition at 13.

well as incumbent, LECs. TRA, however, is not convinced that a transitional safeguard will be adequate to protect the interests of small carriers.

By reason of the foregoing, TRA urges the Commission to grant the MCI Petition and to initiate a rulemaking proceeding to create rules to govern the provision by LECs of billing and collection services to providers of non-subscribed interexchange services.

Respectfully submitted,

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July 25, 1997

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CERTIFICATE OF SERVICE


I, Jeannine Greene Massey, hereby certify that copies of the foregoing document were mailed this 25th day of July, 1997, by United States First Class mail, postage prepaid, to the following:

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